HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 489 of 2007

Between:

Dr. A.S. Gajendra Mudaliar & another

… Appellants

And

Commissioner,
Municipal Corporation of Hyderabad
& others

… Respondents

:: J U D G M E N T ::

Counsel for the appellants : Shri S. Sainathan

Counsel for respondent Nos. 1 to 4 : Smt. Kalpana Ekbote

Counsel for respondent Nos. 5 to 11: Shri V. Venkata Ramana

Counsel for respondent Nos. 16 & 17: Shri D.V. Sitharama Murthy

June 15, 2007

Per G.S. Singhvi, CJ

This appeal is directed against interlocutory order dated 16.05.2007 passed by the learned Vacation Judge in W.V.M.P. Nos.

949 and 1174 of 2007 and W.P.M.P.No.258 of 2007 (Writ Petition No.199 of 2007), whereby he modified order dated 01.02.2007 passed in W.P.M.P.No.258 of 2007 and granted leave to respondent Nos. 12 to 15 in the writ petition to use the premises and at the same time restrained respondent Nos.3 to 6 not to disturb the supply of electricity and water to the disputed premises.

We have heard learned counsel for the parties and perused the record. Ordinarily, the Division Bench is extremely reluctant to interfere with the discretion exercised by the learned Single Judge in interlocutory matters, but having regard to the peculiar facts of this case, we are convinced that if the appeal is not entertained, miscarriage of justice will be occasioned.

A perusal of the record shows that appellants (owners of plot bearing No.253/A, Nehru Nagar, West Maredpally, Secunderabad) filed Writ Petition No. 199 of 2007 alleging that the private respondents have raised the construction on the adjoining plot in gross violation of the sanctioned plan and the illegal construction raised by them is adversely affecting their civil rights. They also filed an application for temporary injunction. After notice to the impleaded respondents, the learned Single Judge disposed of W.P.M.P.No.258 of 2007 by a detailed order and directed respondent Nos. 5 to 11 in the writ petition to forbear from the use and occupation of building in plot No. 253/A, M.C.H. H.No.10-2-280/1, West Maredpally, Secunderabad in any manner whatsoever, either for occupation, sale, lease or mortgage by respondent Nos. 5 to 11 or alienees or other transferees of the property. The learned Single Judge also directed respondent Nos. 1 to 4 to ensure that the building in question is not occupied until further orders from the Court. At the same time, liberty was given to respondent Nos. 5 to 11 to employ watch and ward to safeguard the property or construction material, if any lying on the site. For the sake of convenient reference, the operative part of the order passed by the learned Single Judge is extracted below:

> " For the aforesaid reasons, the respondents 5 to 11 are directed to forbear from the use and occupation of the building (in plot No.253/A, MCH H.No.10-2-280/1, West Maredpally, Secunderabad) in any manner whatsoever, either for occupation, sale, lease or mortgage by the respondents 5 to11 or alianees or other transferees of the property. Respondents 1 to 4 shall ensure that the building in question is not occupied until further orders from this Court. Respondents 5 to 11 are however be at liberty to employ watch and ward to safeguard the property or the construction material if any, on the site. However, that the strength of the watch and ward employed shall not exceed ten persons in all. Respondent No.1 shall also ensure inspection of the premises at least thrice a week to ensure that these orders of the Court are complied with. The 1st respondent shall maintain or cause to be maintained (by a responsible office) a log book with relevant, regular entries to monitor and ensure compliance with this order. Any violation of this order shall forthwith be brought to the notice of this Court by the1st respondent."

Respondent Nos. 12 to 15 filed vacate petition on 13.03.2007, but did not pursue the same till the commencement of the vacation i.e. 02.05.12007. During vacation, they moved the vacation Court. The learned Single Judge entertained their application and passed order dated 16.05.2007 which reads as under:

> " Both these petitions are filed to vacate the interim order dated 01.02.2007 passed in W.P.M.P.No.258 of 2007 in W.P.No.199 of 2007.
>
> Heard both sides.
>
> The interim order dated 01.02.2007 passed in W.P.M.P.No.258 of 2007 is modified to the extent that the purchasers/respondents 12 to 15, who purchased the plots under registered sale deeds, can use the premises.
>
> The respondents 3 to 6 herein are directed not to disturb the electricity and water supply to those premises.
>
> It is made clear that if the writ petition is allowed, no such relief can be granted to the purchasers/respondents 12 to15, who purchased the plots under registered sale deeds."

In our considered view, the learned Vacation Judge should have, instead of modifying interim order dated 01.02.2007, directed that the vacate petition be listed before the Bench which had passed the earlier order. That would have enabled the parties to put forward their respective cases in a correct perspective before the same Bench which had passed order dated 01.02.2007 after hearing the parties.

With the above observation, the appeal is allowed. The order under challenge is set aside with the direction that the vacate petition filed by respondent Nos. 12 to 15 in Writ Petition No. 199 of 2007 be listed before the same Bench which passed interim order dated 01.02.2007.

Shri D. Sitharama Murthy, learned counsel representing respondent Nos. 12 to 15 says that pursuant to order dated 16.05.2007 passed by the Vacation Bench, his clients have already occupied the premises. If that be so, their possession shall not be disturbed for a period of ten days from today.

The Registry is directed to list W.V.M.P.Nos.949 and 1174 of 2007 before the concerned Bench on 19.06.2007.

As a sequel to disposal of the writ appeal, W.A.M.P. No. 936 of 2007 filed by the appellants for interim relief is dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

15.06.2007
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